

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

— — — — —)
UNITED STATES OF AMERICA)
v.) Criminal No.
MOHAMED ABDELLAHI MOHAMED HORMA) 3:18CR18
— — — — —) July 9, 2018

COMPLETE TRANSCRIPT OF MOTION TO DISMISS
BEFORE THE HONORABLE M. HANNAH LAUCK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Angela M. Miller, Assistant United States Attorney
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UNITED STATES DISTRICT COURT

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E X H I B I T S

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GOVERNMENT'S EXHIBITS

Nos. 1A, 1B, 1C, 1D, 1E

23

No. 2, 3, 4, 5, and 6

23

DEFENDANT'S EXHIBITS

No. 1

24

No. 2

24

1 (The proceedings in this matter commenced at
2 2:09 p.m.)

3

4 THE CLERK: Case No. 3:18CR18, the United
5 States of America versus Mohamed Abdellahi Mohamed
6 Horma.

7 Ms. Angela Mastandrea Miller represents the
8 United States.

9 Mr. Robert J. Wagner represent the defendant.
10 Are counsel ready to proceed?

11 MS. MILLER: The United States is ready, Your
12 Honor.

13 MR. WAGNER: Mr. Horma is ready.

14 THE COURT: First, I wish Mr. Camden well on
15 the addition to his family.

16 MR. WAGNER: Thank you, Your Honor.

17 THE COURT: Now, I understand we need to
18 re-arraign on the superseding indictment. Is that
19 correct?

20 MS. MILLER: That is correct, Your Honor.

21 MR. WAGNER: Yes, ma'am.

22 THE COURT: Why don't we go

1 THE COURT: Of course.

2 MS. MILLER: Thank you.

3 THE COURT: Uh-huh.

4 MS. MILLER: Good afternoon.

5 THE COURT: Good afternoon.

6 MS. MILLER: Mr. Mohamed Abdellahi Mohamed
7 Horma has been charged in a superseding indictment.
8 The superseding indictment has the same exact charges
9 as the original indictment, just some corrections that
10 we made to it.

11 Count One charges that on or about
12 September 21, 2016, Mr. Horma, being illegally and
13 unlawfully in the United States, did knowingly and
14 unlawfully possess a firearm, to wit: A Smith &
15 Wesson 9mm handgun, in violation of Title 18, United
16 States Code, Section 922(g)(5)(A).

17 In Count Two, he's charged on or about
18 November 12, 2016, in the Eastern District of
19 Virginia, being an illegal alien, he did possess a
20 Ruger 9mm handgun in violation of Title 18, United
21 States Code, Section 922(g)(5)(A).

22 If convicted of either of those charges, he
23 faces a penalty of up to 10 years incarceration, a
24 \$250,000 fine, and three years of supervised release.

25 In Counts Three and Four, he's charged on or

1 about September 21, 2016, and on November 12 of 2016,
2 after having been indicted for a crime punishable by a
3 term of imprisonment exceeding one year, that is
4 felony transport unstamped cigarettes, that he did
5 willfully receive a firearm in Count Three, the Smith
6 & Wesson just referred to, and in Count Four, the
7 Ruger semiautomatic handgun just referred to, in
8 violation of Title 18, United States Code, Section
9 922(n) and 924(a)(1)(D). If convicted, he faces up to
10 five years incarceration, a \$250,000 fine, and three
11 years of supervised release.

12 In Count Three -- I'm sorry -- in Count Five,
13 he's charged that on or about November 12 of 2016, he
14 did aid and abet in the making of a false statement in
15 the acquisition of a firearm, that is a firearm that
16 was purchased at the War Store, and that is in
17 violation of Title 18, United States Code, Section
18 922(a)(6) and (2). If convicted, he faces up to 10
19 years incarceration, a \$250,000 fine, and three years
20 of supervised release.

21 There's also a forfeiture allegation that if
22 he's convicted of the offenses alleged in Counts Two,
23 Four, and Five of this indictment, that he would
24 forfeit to the United States a Ruger 9mm firearm and
25 all accompanying ammunition.

1 THE COURT: Are there also potential
2 immigration consequences?

3 MS. MILLER: There are, Your Honor. That is
4 part of two of the counts, that he's here illegally in
5 the United States. So he would be subject to
6 deportation as a result of the convictions, any of
7 these convictions.

8 THE COURT: And it would affect his ability
9 to reenter the United States on a legal basis?

10 MS. MILLER: It would affect his ability to
11 pursue his asylum application that's pending, and it
12 would also potentially affect his ability to reenter
13 the United States.

14 THE COURT: That's part of the maximum
15 possible penalties is what I'm asking.

16 MS. MILLER: Yes.

17 THE COURT: It's different for somebody who
18 is a citizen and someone who is not.

19 MS. MILLER: That's correct.

20 THE COURT: All right.

21 MS. MILLER: Thank you.

22 THE COURT: All right. Mr. Wagner, is your
23 client prepared to be arraigned?

24 MR. WAGNER: He is, Your Honor.

1 stand just where you are. I think the translation is
2 more readily conducted there. We can arraign the
3 defendant.

4 THE CLERK: Does the defendant waive formal
5 reading of the indictment?

6 MR. WAGNER: He does.

7 THE CLERK: Mohamed Abdellahi Mohamed Horma,
8 do you understand the charges against you in the
9 pending superseding indictment?

10 THE DEFENDANT: (Through an interpreter)
11 Yes.

12 THE CLERK: I ask you now, what is your plea
13 to Counts One through Five; guilty or not guilty?

14 THE DEFENDANT: (Through an interpreter) Not
15 guilty.

16 THE CLERK: Do you request a trial by jury or
17 a trial by the Court?

18 MR. WAGNER: Jury, please.

19 THE COURT: All right. You-all may have a
20 seat.

21 So we're here on the defendant's motion to
22 dismiss. And I'm going to ask you all if you have
23 talked about how you want to proceed, including
24 whether either side is planning on presenting any
25 evidence.

1 MS. MILLER: Your Honor, we have discussed
2 that, if I may approach. We were prepared to have an
3 immigration officer testify, Officer Chin, today, but
4 we have also spoken about an agreement of
5 stipulations. So I'll orally put them on the record,
6 and then if the Court would like me to file with the
7 Court formal stipulations in the case so that the
8 Court has it on the record, that would be fine as
9 well.

10 But the parties are agreeing to stipulate
11 that the defendant is a citizen of Mauritania. He
12 came to the United States as an adult on a B1/B2 visa.

13 THE COURT: You're going to have to say
14 capital or small whatever.

15 MS. MILLER: Capital B1 slash capital B2
16 visa. He arrived in the United States on December 29,
17 2013, and his visa expired on June 28, 2014.

18 In or about March of 2014, the defendant
19 filed a petition for asylum. The petition, after
20 going through the first round of analysis, was deemed
21 not credible.

22 The defendant then filed, through his
23 attorney, additional information asking for
24 reconsideration. The petition was again reviewed and
25 deemed not to be credible.

1 In 2016, the defendant was placed in removal
2 proceedings with his case referred to an immigration
3 judge. That matter was set for 2023.

4 THE COURT: 2023, not 2021?

5 MS. MILLER: I may have made a typo in there.
6 I'll go back and check. I have his immigration
7 paperwork. I thought it was 2023, but now that you
8 say that, I think it might be 2021.

9 THE COURT: The brief said 2021.

10 MS. MILLER: Is it 2021?

11 THE COURT: I don't know. That's what your
12 brief said. I don't have the documentation.

13 MS. MILLER: I do. I filed it with the
14 Court, but I have another copy of these materials for
15 the Court as a government exhibit. It's also been
16 provided to the defense, so --

17 THE COURT: I'm sorry. When was that filed?

18 MS. MILLER: Maybe a month or two ago.

19 THE COURT: Okay.

20 MS. MILLER: I'm going to have to look
21

1 front of the immigration court. And after he was
2 brought here to federal court on the current charges,
3 that date was moved to August of 2018.

4 The defendant was charged on July 13, 2016,
5 in Howard County, Maryland, via an indictment with
6 transporting cigarettes on which the tobacco tax had
7 not been paid in violation of the Maryland Tax-General
8 of the Annotated Code of Maryland, T-G 13-1015.

9 The indictment reads that this was contrary
10 to the Act of the Assembly and made and provided, and
11 against the peace, government, and dignity of the
12 state.

13 MR. WAGNER: Judge, I think for purposes of
14 stipulation, the indictment itself would speak to
15 this. I don't know that we want to necessarily
16 stipulate to what the indictment says. We didn't
17 discuss this specifically, but I would just ask that
18 the indictment be produced rather than having a
19 stipulation as to what it says.

20 MS. MILLER: We'd be happy to do that, Your
21 Honor.

22 MR. WAGNER: Thank you.

23 MS. MILLER: We'll provide it to the Court.
24 I will just tell the Court that Count Two in the
25 indictment is a misdemeanor, and we're not alleging

1 that in the indictment here.

2 THE COURT: Just to be clear for the record,
3 Count Two of the Maryland indictment is a misdemeanor.

4 MS. MILLER: We're talking about Count Two of
5 the Maryland indictment. So, he's charged in a
6 two-count indictment --

7 THE COURT: Right. I know. I'm just making
8 clear for the record --

9 MS. MILLER: Yes, thank you.

10 THE COURT: -- because we have an indictment
11 in front of us.

12 MS. MILLER: Yes.

13 The defendant was arraigned on the charges in
14 early September 2016, and it was after that date that
15 he's alleged to have received the firearms.

16 THE COURT: Can I ask you a question. Why
17 are you guys not just putting the dates on the record?

18 MS. MILLER: What dates?

19 THE COURT: You're saying "early 2016,
20 sometime in March."

21 MS. MILLER: Because I have -- I don't have
22 the actual paperwork in front of me, but I have it in
23 my file here. So I can do that. I didn't think I was
24 going to have to put it on the record today. I
2

1 complete file.

2 But I can tell the Court that he was stopped
3 in Howard County, Maryland, on July 16th of 2016. He
4 was indicted in the indictment that I just made
5 reference to on July 27th of 2016. He appeared in
6 court in Maryland in early September. I have the date
7 in my file. I don't have the date in front of me. I
8 believe it's September 2nd or 4th, but I want to
9 clarify that for the Court.

10 THE COURT: I'm going to want written
11 stipulations. This is a little mushy for me. One of
12 the firearms is alleged to have been possessed in
13 September of 2016. You're making it clear it was
14 before the 21st. I understand what you're doing.

15 MS. MILLER: That's all, yes. That's all I'm
16 saying.

17 THE COURT: It's just --

18 MS. MILLER: Prior to that date, yeah. We'll
19 put the dates, the exact dates in the written
20 stipulation to the Court, but we just want the Court
21 to be aware at this point that it was, as the Court
22 just said, prior to -- after indictment but prior
23 to -- it's actually just after indictment and after he
24 was aware that he was indicted. After his appearance
25 in state court on that indictment he acquired the two

1 firearms.

2 I'll tell the Court that I believe that the
3 only other thing that we would stipulate and agree to
4 is that on November 15th, he pled guilty to the felony
5 charge in Maryland.

6 THE COURT: November 15 --

7 MS. MILLER: 2016.

8 THE COURT: And he was sentenced to 11 months
9 imprisonment?

10 MS. MILLER: He was sentenced to 11 months
11 with all the time suspended. He received a fine. And
12 I can tell the Court the amount of the fine, but it
13 was --

14 THE COURT: This is a little awkward; right?
15 I may have questions about some of this stuff.

16 MS. MILLER: I think we can agree to the
17 answers to the Court's questions about it, though.

18 THE COURT: Yeah, but I'm not working from
19 the stipulation that you've agreed to, and it's
20 awkward to have stipulations only oral.

21 MS. MILLER: I understand.

22 THE COURT: I mean, obviously, this has been
23 set for awhile; right?

24 MS. MILLER: Well, we're going to hand up to
25 the Court today, while Mr. Wagner is arguing, we will

1 provide the Court with documentation for everything
2 that I just said, because we have all of that today in
3 the files here. So, we can certainly provide that to
4 the Court, and we'll mark it as an exhibit. We'll put
5 it all together. You'll have a copy of the
6 indictment, a copy of the plea, a copy of the -- I
7 could give you a copy of the transcripts of the plea
8 hearing, and a copy of the transcript of his
9 arraignment, and that would have all of these dates
10 noted in that, and then it would be filed by --

11 THE COURT: So these exhibits that you have
12 that you filed, are those exhibits that are before me
13 for purposes of the motion to dismiss?

14 MS. MILLER: Yes, they are. We're entering
15 them into evidence at this point as well. That's
16 exhibits 1A, 1B --

17 THE COURT: All right. So, my clerk is
18 telling me that the United States did not file
19 anything in the CM/ECF, but that the defendant filed
20 his A file. So whatever you're saying was filed about
21 a month ago, I didn't remember seeing, but that
22 doesn't mean -- I'm often wrong, but my clerk is
23 almost never wrong, and she says --

24 MS. MILLER: I hand-delivered it to the
25 Court. I didn't file it in the ECF filing system. I

1 filed it to the extent that I brought it to the Court
2 so that the Court would have it in advance of the
3 hearing, and I brought it -- and I provided it on the
4 same day to the defendant.

5 THE COURT: So it's a courtesy copy, but it's
6 not in the record.

7 MS. MILLER: That's right.

8 THE COURT: It's a courtesy copy of something
9 that's not in the record.

10 MS. MILLER: And we have them marked and are
11 asking to put them into the record, without objection
12 by the defendant, the exact same documents which were
13 marked for the Court when we hand-delivered them as
14 1A, B, C, and D, and it's just documents taken from
15 the A file.

16 THE COURT: Did you deliver them to our
17 chambers? We actually seem not to have gotten them.

18 MS. MILLER: Yes, we did deliver them to your
19 chambers.

20 THE COURT: Well --

21 MS. MILLER: They are all documents that are
22 also in the A file, Your Honor, that was filed by the
23 defendant.

24 THE COURT: Apparently, all that was filed
25 was the asylum application, not the A file.

1 MS. MILLER: Okay. I'm going to --

2 THE COURT: So we're going to take a recess.
3 I'd like you to be a little more specific about what
4 exactly is in front of me or not. And you all can
5 have agreed to it. And, obviously, there were papers
6 delivered to us that we didn't get, which happens, but
7 I want to make sure that I have them available to me
8 and that I know the record we're dealing with before
9 we go forward.

10 So we'll just take a few minutes. It sounds
11 like it changed pretty soon to when I was about to
12 take the bench. So we'll just give you the
13 opportunity to be a little more direct, and so that I
14 can be sure I have what I want also.

15 MS. MILLER: Sure.

16 THE COURT: All right. So we'll take a
17 recess.

18 MS. MILLER: All right. Thank you.

19 (Recess taken.)

20 THE COURT: All right. So where do things
21 stand?

22 MS. MILLER: So, we have a set of documents
23 for the Court that defense and obviously I have, that
24 we'll hand up, that go through all the dates that the
25 Court was asking about and the documents that we were

1 referring to. So I think that would make things
2 easier, hopefully. I will hand those up to Your
3 Honor.

4 THE COURT: So, I'm just going to state, Ms.
5 Miller, I understand that what happened is there were
6 documents that were emailed to my clerk outside of the
7 normal process of submitting documents, and that's why
8 we weren't really aware of them. And I'm going to ask
9 that that process stop altogether.

10 MS. MILLER: Yes, that was just a courtesy
11 copy in advance of the hearing. We were planning to
12 introduce them at the hearing.

13 THE COURT: I think that what I said was if
14 you're going to

1 set for the record, for the public record that will be
2 redacted, but I think for the purpose of what we were
3 going to do today, which was to put them in through an
4 agent, we wanted to have the set unredacted so that
5 the A file numbers and the dates of birth and all that
6 would be available to the agent in case there was an
7 issue about whether this was his A file or something
8 like that.

9 So we will provide a set through the filing
10 system, along with the stipulation, but they'll be
11 redacted to have no personal identifiers included.
12 And there will, obviously, not be any references to
13 his reasons for filing for asylum, because I think
14 that was a concern as well. So we'll take that out.
15 But we'll work together to do that at the end of the
16 hearing or tomorrow and file that with the Court.
17 Then either later today or tomorrow, whenever we sit
18 down, and make sure that we both agree to the
19 redactions.

20 THE COURT: All right. Just give me a
21 second, please, to look at these.

22 MS. MILLER: Sure.

23 THE COURT: So, in your briefing, you all
24 referred to a specific date of application for asylum.
25 Your stipulation that you said to me at the beginning

1 of this hearing did not specify -- well, I actually
2 think they might have been inconsistent. And so I
3 want to be sure that we address what that date is.

4 I certainly don't have a document that
5 reflects that.

6 MS. MILLER: I think that we said -- I said
7 aloud that it was March of 2014, but we are
8 stipulating that in between the date of his arrival
9 and the expiration of his B1/B2 visa that he applied
10 for asylum.

11 I don't have his actual -- the actual date of
12 when he stamped it and sent it in the mail. I would
13 know when it was received but not when it was sent.

14 So I think in the defendant's position, he
15 said sometime before the expiration.

16 THE COURT: Right. Somebody represented that
17 it was February 13th, and I think that was in your
18 briefing.

19 MS. MILLER: Okay. Then I took that from the
20 file. But for purposes of the stipulation, we're just
21 agreeing that it was before the B1/B2 visa expired
22 that he filed his asylum.

23 THE COURT: What if I thought the date were
24 important?

25 MS. MILLER: Well, if the Court thinks that,

1 we'll pull the file right now, and we'll tell you the
2 exact date.

3 The issue that they brought up in their
4 motion is that prior to the expiration. He doesn't
5 say when.

6 I'm trying to fill in the blanks for the
7 Court as best I can.

8 THE COURT: Both briefs refer to, or at least
9 the government's brief, I can't remember now, about an
10 application for work authorization that was approved.
11 Do you have a date for that?

12 MS. MILLER: It was not in my brief, Your
13 Honor. I can look it up.

14 MR. WAGNER: Judge, I believe our opening
15 brief speaks to his authorization.

16 THE COURT: Right.

17 MR. WAGNER: On page two.

18 THE COURT: On page two. It doesn't have a
19 date.

20 MR. WAGNER: I'll try to get that for the
21 Court.

22 MS. MILLER: So, I don't have the date that
23 he applied for work authorization. Mr. Wagner said
24 he'll get that for the Court. But he signed the
25 application for asylum on February 4th of 2014, and it

1 was noted as having been received February 13th with
2 an interview date -- February 13th of 2014 with an
3 interview date of March 26th of 2014.

4 THE COURT: Well, the February date was one
5 that was in the briefing. So I would prefer to have
6 that document in the record.

7 MS. MILLER: Okay. His application for
8 asylum was already filed with the Court under seal; is
9 that right?

10 THE COURT: Apparently, the defense did that
11 as part of their motion. But the issue is -- yes, but
12 there's no date on it. We don't know what date it is.

13 MS. MILLER: Okay. So we'll get a copy made
14 for the Court while we're going forward on the hearing
15 so we don't have to take another break, so we can just
16 move forward, but we're agreeing to that, and we'll
17 provide the Court with those specific documents that
18 will show that, those dates I just told the Court.

19 THE COURT: And we talked before we took a
20 break about the date of the scheduled hearing. And is
21 that in the documents you gave me, the 2021 versus
22 2023 date?

23 MS. MILLER: Yes. So it was March 2nd, 2021.

24 THE COURT: And which document is that in?

25 MS. MILLER: Hang on. Let me pull it up. I

1 think it was actually told to me by the defense. It
2 was told to me by the defense, and we would agree that
3 that was the date that he had that hearing originally
4 scheduled for.

5 THE COURT: So, I want some basis for that.
6 So, the March 2nd, 2021, and the moving up date to
7 August 8th.

8 MS. MILLER: August 3rd.

9 THE COURT: August 3rd.

10 MS. MILLER: I think there is a document in
11 his A file that will show that, Your Honor, and we'll
12 pull that from the file for the Court.

13 THE COURT: I'm sure there is also.

14 The date of the rebuttal submitted, that's
15 not in here, right, for the denial?

16 MS. MILLER: Correct. That is something that
17 the defense wants to introduce.

18 THE COURT: Okay.

19 MS. MILLER: Without objection, obviously. I
20 asked if he wanted me to put it up, and he said that
21 he would prefer to do it.

22 THE COURT: All right.

23 MS. MILLER: So may I go through for the
24 record what's in the exhibits or does the Court not
25 want me to do that? Just for the new

1 THE COURT: I presume you're going to submit
2 a stipulation that covers it.

3 MS. MILLER: Okay.

4 THE COURT: This has taken an hour.

5 MS. MILLER: I know. I understand. Okay. I
6 will defer to Mr. Wagner since it's his motion.

7 THE COURT: So, I guess I'm noting for the
8 record that the government has submitted Exhibits 1A,
9 1B, 1C, 1D, 1E, Government's Exhibit 2, 3, 4, 5, 6,
10 all of which are submitted and made part of the record
11 without objection. Is that correct, Mr. Wagner?

12 MR. WAGNER: Yes, Your Honor.

13 MS. MILLER: That's correct, Your Honor.

14 MR. WAGNER: Subject to redaction.

15 THE COURT: Yes.

16 (Government's Exhibits No. 1A, 1B, 1C, 1D,
17 1E, 2, 3, 4, 5, and 6 were admitted into evidence.)

18 MR. WAGNER: We have a single exhibit, a
19 rebuttal letter dated May 13, 2014, part of the A file
20 produced to the defense in discovery by the
21 government, if I can submit that as Defense Exhibit 1.

1 MR. WAGNER: Yes, I believe that's been
2 received by the Court.

3 THE COURT: Is that Exhibit 2 for purposes of
4 today?

5 MR. WAGNER: For purposes of today, let's
6 call it Exhibit 2. Thank you, Judge.

7 THE COURT: Well, yes. Okay.

8 (Defendant's Exhibits No. 1 and 2 are
9 admitted into evidence.)

10 MR. WAGNER: Are you ready to hear the
11 argument?

12 THE COURT: I am.

13 MR. WAGNER: Okay. Thank you for your
14 patience, Your Honor.

15 THE COURT: Uh-huh.

16 MR. WAGNER: Judge, the issues before the
17 Court have been fairly thoroughly briefed. So I will
18 not be rehashing arguments that have previously been
19 presented to the Court, but I do intend to discuss
20 matters that provide some additional context and to
21 touch on some points that I believe require some
22 additional explanation. And also I wanted to be able
23 to address any questions that the Court may have.

24 There are four issues, essentially, before
25 the Court. The first issue is the question of Mr.

1 Horma's alleged illegal or lawful presence in the
2 United States.

3 Second is whether the Second Amendment
4 affords protection to Mr. Horma as to Counts Three and
5 Four. That is conditioned upon the Court's finding
6 regarding the first issue of whether he is here
7 illegally or unlawfully. And then the second part of
8 that second issue is whether 18 U.S.C. 922(n) is
9 unconstitutional under the Second Amendment.

10 The third issue is whether the Maryland
11 cigarette charge at issue qualifies as an exception
12 under 921(a)(20)(A), the statute that exempts certain
13 matters from prosecution under 18 U.S.C. 922(g) and
14 (n).

1 United States to possess a firearm.

2 The Fourth Circuit in *Al Sabahi* addressed a
3 situation in which a visa to remain in the United
4 States expired, but it did not address situations
5 under which a person is applying for asylum, which is
6 the case here.

7 *Bazargan*, an Eighth Circuit case --

8 THE COURT: None of those cases address an
9 instance where somebody was in the country lawfully.
10 All their reasons for being in the country lawfully
11 had expired at the time that any action by them took
12 place. I know that.

13 MR. WAGNER: That's exactly the distinction
14 that we're trying to draw here. But what we're
15 further saying is that Mr. Horma -- and I think this
16 is uncontested -- that Mr. Horma has never been in the
17 United States under a period of an unauthorized stay.
18 His authorized period of stay never expired.

19 The government's admitted that in their
20 pleadings. Document 22 at page 17, "A pending
21 application for asylum does confer an authorized
22 period of stay." Bottom of the page --

23 THE COURT: I know they admitted it.

24 MR. WAGNER: Okay. So the import of all
25 this, Judge, can be found in 27 C.F.R. 471.11. It's

1 on page seven of the defendant's supplemental
2 pleading.

3 This regulation states that "Aliens illegally
4 or unlawfully in the United States include any alien
5 who is a nonimmigrant and whose authorized period of
6 stay has expired."

7 So it is uncontested that Mr. Horma's
8 authorized period of stay never expired. So under
9 this regulation, Judge, which has been cited by the
10 Fourth Circuit in *Al Sabahi*, Mr. Horma has been in the
11 United States legally and lawfully for all of the time
12 that he has been here.

13 So, consequently, Counts One and Two should
14 be dismissed as a matter of law.

15 THE COURT: Well, the United States cited the
16 policy manual that indicates that in chapter three,
17 part B, volume seven, that simply filing for an
18 application for immigration benefit or having a
19 pending benefit application generally does not put a
20 foreign national into a lawful immigration status.

21 So tell me what deference I owe that and what
22 I should do with their argument.

23 MR. WAGNER: Judge, we would suggest that no
24 deference should be given to this particular
25 regulation. Congress has not endorsed it under the

1 definition of being illegally or unlawfully in the
2 United States.

3 THE COURT: There's no *Chevron* deference?
4 There's no deference?

5 MR. WAGNER: Perhaps some deference but
6 certainly not to the extent that the government would
7 submit to the Court. Any deference should certainly
8 be overridden by the very statute that the Fourth
9 Circuit has relied on in the *Al Sabahi* case, a case
10 cited by the government.

11 THE COURT: But doesn't that same policy
12 manual say that those in a period of authorized stay
13 are protected from accruing unlawful presence? Do you
14 want me to disregard that also?

15 MR. WAGNER: Judge, unfortunately, I'm not
16 aware of that particular provision from that
17 regulation, but --

18 THE COURT: It's in the same policy manual
19 that they cited.

20 MR. WAGNER: I understand, Judge. I was
21 unaware of that particular provision in the manual. I
22 don't believe it's been cited in the briefs, but I
23 would certainly hope that the Court would look to that
24 favorably on the defendant, and if the rule of lenity
25 is to apply, then certainly that would weigh in favor

1 of the defendant in construing any competing
2 regulations that the Court has reviewed.

3 So, Judge, I think what the most important
4 regulation that we have here is that cited by the
5 Fourth Circuit in the *Al Sabahi* case which talks about
6 an authorized period of stay in the United States.
7 And Mr. Horma was always in an authorized period of
8 stay.

9 THE COURT: Well, that's the whole point;
10 right?

11 MR. WAGNER: Yes, it is.

12 THE COURT: The whole point is, is an
13 authorized stay lawful, unlawful or something else.

14 MR. WAGNER: And we would submit to the Court
15 that it is lawful and legal, that if he was under a
16 period of authorized stay, that he could not be
17 punished under 922(g)(5)(A).

18 THE COURT: All right.

19 MR. WAGNER: So that leads to the second
20 issue, Judge, and the second issue, frankly, the Court
21 needs to determine initially whether or not Mr. Horma
22 was in the United States illegally or unlawfully in
23 order to find that he has the protection of the Second
24 Amendment. The *Carpio-Leon* case clearly states this.

25 So we submit, though, even if the Court finds

1 that Mr. Horma was here illegally, a facial challenge
2 to 922(n) is permitted by the Court.

3 THE COURT: Well, isn't it the case that the
4 Fourth Circuit, and specifically a district court case
5 here, and other Fourth Circuit cases, suggest that you
6 shouldn't jump to the facial challenge before you
7 decide the as-applied challenge, because if the
8 as-applied challenge decides that the statute is
9 unconstitutional, then when you're deciding facially
10 whether no set of circumstances exist where the
11 statute would be valid, you're done with the facial
12 challenge. That's a decision by Judge Ellis in
13 *Masciandaro*. Neither of you addressed which order to
14 do it in, but the Fourth Circuit, and actually a
15 challenge to an automatic rifle ban, says do

1 once the Court makes that as-applied determination,
2 the issue either goes forward under the Second
3 Amendment if he was here legally or lawfully or
4 doesn't go forward, but it seems to me, Judge, that if
5 the Court is to hear the facial challenge, then it
6 could not partake of the legal determination that the
7 Court would make under the as-applied challenge.

8 But I understand what the Court is saying.
9 If the law is that the as-applied challenge needs to
10 be made before the facial challenge is to be made,
11 then, clearly, the procedure would be to determine
12 whether or not he was here illegally or unlawfully.

13 THE COURT: So it's the *Masciandaro* case, and
14 that was the right to carry a loaded firearm in a

1 here legally and lawfully, and that will lead you to
2 the resolution of the second issue in the case; the
3 Second Amendment argument.

4 And I would ask the Court to turn to the
5 Fourth Circuit decision in *Kolbe v. Hogan*. That
6 decision starts out by talking about the parade of
7 horribles and atrocities and mass shootings that
8 assault weapons and large capacity magazines are
9 responsible for, and this makes an empirical showing
10 to the Court of the dangers of these types of weapons
11 and how the Second Amendment does not protect the
12 possession of these weapons. This was not a matter,
13 the possession of or the ruling regarding assault
14 weapons and large capacity magazines, it's not a
15 matter of the Second Amendment's core protections.

16 So in the Second Amendment context, according

1 MR. WAGNER: Well, we would suggest that a
2 strict scrutiny standard should apply in this case,
3 Judge.

4 THE COURT: I thought that's what you meant
5 by heightened. Sorry.

6 MR. WAGNER: Well, either the intermediate
7 level or the strict level. The application of either
8 of those standards the government still bears the
9 burden of proof in demonstrating the justification for
10 the challenged statute.

11 So the government has provided nothing to the
12 Court, no statistics, no data, no anecdotal
13 information, no empirical evidence suggesting that
14 such a prohibition and such an infringement of
15 constitutional rights is justified.

16 Now, the law allows persons who are under
17 indictment to possess firearms.

18 THE COURT: Well, wait a minute. Under
19 *United States v. Carter*, the Fourth Circuit held that
20 the United States may resort to a wide range of
21 sources, such as legislative texts and history,
22 empirical evidence, which is what you're pointing to.

23 MR. WAGNER: Exactly.

24 THE COURT: Case law and common sense;
25 correct?

1 MR. WAGNER: Yes, that is correct, Judge.
2 But there is no empirical evidence before the Court.
3 And in the absence of the empirical evidence, I
4 believe that the Court needs to, well, look to common
5 sense, to look to cases, and to look to authority, and
6 there's very little authority, very little information
7 before the Court to suggest what danger is posed by
8 people who are under indictment receiving firearms.
9 They are permitted under the code to possess firearms.
10 Those who are released, those people under indictment,
11 and only those who are released by the court would be
12 subject to this prohibition, subject to the
13 prohibition of receiving firearms.

14 And so there's no information before the
15

1 MR. WAGNER: Yes, it is.

2 THE COURT: The briefing kept saying receipt.
3 It's receipt or transfer.

4 MR. WAGNER: It is, Judge. But what we're
5 dealing with here, certainly what Mr. Horma is charged
6 with, is receipt.

7 THE COURT: Right, but it's a constitutional
8 challenge.

9 MR. WAGNER: You're absolutely right.

10 THE COURT: Right.

11 MR. WAGNER: Under the *Heller* decision, under
12 *Chester*, under *Kolbe v. Hogan*, the prohibition under
13 922(n) goes to the core protections of the Second
14 Amendment. There's a two-step process that the Court
15 needs to undergo. But 922(n) prohibits the arming,
16 the receipt and transfer, of a person of any and all
17 firearms in the defense of his home. Because this is
18 an absolute prohibition, strict scrutiny should apply.
19 But even with intermediate scrutiny, the government
20 has failed to articulate a reasonable fit between the
21 challenged regulation and the substantial government
22 interest.

23 If this Court is true to *Heller's* dictates
24 regarding the core protections of the Second
25 Amendment, then strict scrutiny would be the

1 appropriate standard, and the government would have to
2 demonstrate that the challenged regulation was
3 narrowly tailored to satisfy a compelling government
4 interest.

5 So, based on this, the Court should find that
6 922(n) is unconstitutional under the Second Amendment.

7 THE COURT: So, what if I apply intermediate
8 scrutiny? Why isn't it narrowly tailored because it's
9 a limited period of time, because they can possess
10 other guns, it's just an issue of somebody has found
11 probable cause against somebody else, they're in the
12 system, they're notified of a crime, and there's a
13 moderate protection that they're not going to receive
14 firearms during that time or transfer firearms, and
15 why isn't that a reasonable fit?

1 strict scrutiny standard should be applied.

2 THE COURT: What if I applied intermediate?

3 MR. WAGNER: Yes.

4 THE COURT: I'm asking you that different
5 question. I know what you argued.

6 MR. WAGNER: All right. In that situation,
7 there is no rational basis that the government --
8 excuse me.

9 THE COURT: Reasonable fit.

10 MR. WAGNER: Reasonable fit that the
11 government can demonstrate for their governmental
12 interest in the 922(n) statute.

13 THE COURT: So my question was, why isn't
14 it -- if you have a congressional intent that says
15 you've been convicted of a felony, and so everyone
16 convicted of a felony can't have a gun, that's a
17 governmental interest that derives in case law from
18 public safety. And there's Fourth Circuit cases that
19 say that.

20 MR. WAGNER: Of course.

21 THE COURT: So, if you then have a statute
22 that says if you're under indictment for a felony
23 while that's going on, while you are facing the
24 possibility that you could lose your ability to
25 possess any kind of firearm if you're convicted,

1 because that's the result of being convicted, why
2 isn't it a reasonable fit to say all we're going to
3 say is you're not convicted yet. You're only under
4 indictment, but you can't get new weapons, and you
5 can't transfer weapons. Why isn't that a lesser
6 restriction that is tailored to a group of folks who
7 are facing serious charges and know, as the government
8 argued in its brief, and know that they could lose
9 their right to hold weapons? Why isn't that a
10 reasonable fit? And why doesn't the fact that there
11 are two levels reflect congressional intent to that?

12 MR. WAGNER: Our position here, Judge, is
13 that if that person, that same person, has the right
14 to possess the weapon, has the right to exercise that
15 Second Amendment core protection to possess

1 application for a receipt of a weapon to the
2 circumstances of the case to determine the
3 dangerousness of the person, to determine whether or
4 not a possession of a firearm for that person based on
5 the circumstances.

6 Take the *Laurent* case, Your Honor, from the
7 New York District Court. That was a person who was
8 charged with a robbery, charged with a violent crime.
9 Very different than the situation we have here, a
10 situation which involves an indictment for unstamped
11 cigarettes in Maryland, a non-violent crime.

12 So at least there needs to be some provision
13 in the law for some kind of evaluation of the danger
14 that that person who may obtain that firearm, the
15 danger that that person poses, Judge, and this would
16 address the rationale that the government is required
17 to provide under the Second Amendment

1 had been convicted of certain offenses, to have an
2 exemption to prosecution. And it also applies to
3 someone who's under indictment.

4 So, 921(a)(20)(A) states that the term "crime
5 punishable by imprisonment for a term exceeding one
6 year" does not include antitrust violations, unfair
7 trade practices, restraints of trade, or other similar
8 offenses relating to the regulation of business
9 practices.

10 Maryland's cigarette violations should be
11 considered as a similar offense to antitrust
12 violations, unfair trade practices, and restraints of
13 trade. Untaxed cigarettes provide a competitive
14 advantage, taking unfair advantage over retail sellers
15 of cigarettes, a competitor. And it should be
16 construed broadly, Judge. It should be construed as
17 an economic regulation.

1 *Johnson* and *Dimaya* mark a new era in analyzing
2 residual clauses. 18 U.S.C. 924(e), the *Johnson* case,
3 and 18 U.S.C. 16(b), the *Dimaya* case, had been relied
4 on for years, but the U.S. Supreme Court through the
5 *Johnson* and *Dimaya* cases have changed that. Courts
6 must now consider the vagueness of residual clauses,
7 especially in criminal cases, with greater scrutiny
8 through the lens of *Johnson* and *Dimaya*.

9 All of the cases cited by the government in
10 assessing the constitutionality of that residual
11 clause came before *Johnson*.

1 the comparison in his dissent in that *Stanko* case
2 between the residual clause in 921(a)(20)(A) and the
3 residual clause in the Armed Career Offender Act,
4 924(e), which was the subject of *Johnson*.

5 At page 420, he states, "But here the
6 vagueness of statute goes beyond, for example, the
7 uncertainty inherent in defining a 'violent felony'
8 for purposes of 18 U.S.C. 924(e)(2)(B), codifying in
9 part the Armed Career Criminal Act."

10 Circuit Judge Bright goes on to say that
11 "924(a)(20)(A)'s exemption of similar offenses clause
12 lacks the same specificity." And this was brought
13 before

1 are fairly similar in nature; correct?

2 MR. WAGNER: I would say that the list of
3 crimes under ACCA is far broader than what we have
4 here, but that doesn't necessarily mean a narrow
5 interpretation of the residual clause is required
6 here. I think certainly in light of *Johnson* and
7 *Dimaya*, a much broader interpretation of that residual
8 --

9 THE COURT: Is it your contention that the
10 taxing of cigarettes, directly or indirectly, has an
11 economic effect?

12 MR. WAGNER: The taxing of cigarettes --

13 THE COURT: Isn't it the case that the
14 similar offenses that are addressed here govern
15 behavior that affect consumers and competitors?
16 Correct?

17 MR. WAGNER: Yes, Your Honor, they do.

18 THE COURT: And to the extent that the clause
19 that you challenge, it is not a direct effect on
20 consumers and competitors. It's a tax law.

21 MR. WAGNER: Some of the cases that have been
22 cited talk about an elements test and within the
23 elements there must be some effect on competition,
24 some effect on consumers, and I would concede that the
25 elements of the Maryland statute do not have any

1 inquiry into competitiveness or consumers, but,
2 nonetheless, I think that a tax of cigarettes, an
3 unstamped cigarette law, necessarily impacts
4 competition and --

5 THE COURT: Indirectly.

6 MR. WAGNER: Indirectly, yes. I think that's
7 fair to say.

8 THE COURT: All right. Now, I'm going to ask
9 you, Mr. Wagner, you rely heavily on *Heller* and its
10 finding with respect to the Second Amendment right to
11 possess weapons. What class of individuals does
12 *Heller* apply to?

1

1 Second Amendment rights, but those who are noncitizens
2 aren't necessarily precluded from having Second
3 Amendment rights. As long as they are here lawfully,
4 they don't have to be citizens to enjoy the
5 protections of the Second Amendment. And that's a
6 fairly conservative application of the Second
7 Amendment by the Fourth Circuit.

8 So I don't think it's just restricted to
9 citizens, Your Honor, the application of the Second
10 Amendment.

11 THE COURT: Right. I asked about *Heller*.

12 MR. WAGNER: Right. But I'm just talking
13 about *Heller* in the eyes of the Fourth Circuit and how
14 they've construed *Heller* and how they've construed the
15 Second Amendment after the decision in *Heller*.

16 THE COURT: Yes. All right. I think those
17 are all the questions I have.

18 MR. WAGNER: Thank you.

19 THE COURT: Wait. Actually, I do have one
20 more question.

21 MR. WAGNER: Sure.

22 THE COURT: I'm sorry. In your briefing, you
23 turn a couple of times to arguments that suggest
24 analogies to First Amendment assessments of the
25 constitutionality of a statute. And I don't

1 understand why you would do that when the Fourth
2 Circuit has told me how to evaluate it. Can you tell
3 me why I would turn to that? There's a test in the
4 Fourth Circuit.

5 MR. WAGNER: Right. I think that the reason
6 we've relied on the First Amendment in our briefing, I
7 would suggest, is because we want to show that strict
8 scrutiny is the proper standard to apply.

9 In analyzing the Second Amendment issues to
10 the First Amendment issues, we're trying to
11 demonstrate that these core protections that are
12 protected by both the Second Amendment and the First
13 Amendment should be subjected to strict scrutiny
14 analysis. So that's the principal reason for reciting
15 the First Amendment cases.

16 THE COURT: All right.

17 MR. WAGNER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MS. MILLER: Your Honor, if I may begin with
20 the issue of whether or not the defendant is in the
21 United States lawfully, I think the seminal case that
22 we look at here is *United States v. Al Sabahi*. And
23 the court in *Al Sabahi*, the Fourth Circuit, recognized
24 or noted that the federal regulations recognize that
25 aliens illegally or unlawfully in the United States

1 include "nonimmigrants whose authorized period of stay
2 has expired," and they cited to 27 C.F.R. 478.11 with
3 approval.

4 What I wanted to also point out to the Court
5 is the defendant in *Al Sabahi* argued that he was not
6 illegally or unlawfully in the United States at the
7 time he possessed the firearms, and it was after his
8 visa expired. But in deciding *Al Sabahi*, the Fourth
9 Circuit specifically referred to the *Bazargan* case in
10 which that defendant had filed a petition for asylum.

11 THE COURT: After -- when he was already in
12 the unlawful status.

13 MS

1 transfer procedures, which would make the Court think
2 that he had already violated, and, therefore,
3 afterward applied for asylum, because in May of '89 is
4 when he applies for asylum, and that's when he also
5 receives his employment authorization.

6 But then in November of '89, he enrolls in
7 Morehead State University, and he failed to follow the
8 mandatory INS procedures for transfer. And then he's
9 interviewed in January of '91. The guns are acquired
10 in April of '91. I think maybe also in November. And
11 then his asylum application is denied in May of '91.
12 And the judge found that the defendant's status as a
13 nonimmigrant alien ended in early 1990.

14 THE COURT: Which judge?

1 terminated in early 1990.

2 So, Bazargan, as I just noted for the Court,
3 submits his application for asylum in May of '89. So
4 his application for asylum was pending. And even
5 though he technically violated, the court used the
6 1990 violation, not the prior violation, in holding
7 that he was unlawfully in the United States.

8 But I would say to the Court even if he had
9 applied for asylum after the date that his visa had
10 expired, the court in *Al Sabahi* -- and no court, no
11 court, has made a distinction between an application
12 for asylum and an application for a change of status.
13 There is not a single court that has found that a
14 person applying for one versus the

1 So what I'm talking about is in *Al Sabahi*,
2 referring to *Bazargan* and other cases with approval,
3 first the federal regulations are cited to, that you
4 just asked about a moment ago, with approval. And
5 then it cites a number of cases that say an
6 application for a change of status does not change a
7 person into a lawful -- lawfully here for purposes of
8 922(g)(1) or (5) or anything else.

9 It's also, I think, important that the Fourth
10 Circuit in *United States v. Cavillo-Rojas*, which is an
11 unpublished opinion but one that the court in *Al*
12 *Sabahi* talks about, also found that the mere filing of
13 an application for adjustment of status and receipt of

1 MS. MILLER: All right. If I can have a
2 moment. I thought the Court was referring to my
3 reference to 478. Yes. So, it says -- well, first of
4 all, the policy manual is not obviously binding on the
5 Court. The Fourth Circuit's decision in *Al Sabahi* is.

6 THE COURT: Then why did you raise it? So
7 what deference do I give it?

8 MS. MILLER: You know, some. The Court can
9 look at it and consider it.

10 THE COURT: Under the law.

11 MS. MILL

1 that.

2 MS. MILLER: Okay.

3 THE COURT: I know that --

4 MS. MILLER: So it's not --

5 THE COURT: Please don't talk over me.

6 MS. MILLER: I apologize.

1 period of stay, it does not extend an alien's lawful
2 immigration status or cure his unlawfully status.

3 THE COURT: The reason -- obviously, I'm
4 going to ask you the same question I asked Mr. Wagner,
5 which is, in note 17 of the policy manual, it says
6 that simply filing for an application for immigration
7 benefit or having a pending application generally
8 doesn't put a foreign national into lawful immigration
9 status, which is what you're citing, but note 17 also
10 says, "However, those in a period of authorized stay
11 are protected from accruing unlawful presence."

12 MS. MILLER: And I think there they're
13 talking about temporary protected status, TPS.
14 They're not talking

1 to remain, of course. While his asylum petition was
2 pending, he was allowed to remain. So, to that
3 extent, if the Court wants to say "authorized period
4 of stay," he is allowed to remain. And as cases have
5 said, permitting someone or allowing them to remain is
6 quite different than conferring lawful status on an
7 individual.

8 THE COURT: Well, the issue, though, is are
9 they unlawful; right?

10 MS. MILLER: Right. So our argument based on
11 *Al Sabahi* and the other 14 cases that have addressed
12 this all say he is unlawfully here for purposes of
13 922(g)(5)(A). And that's the case in *Latu*, a Ninth
14 Circuit case

1 MS. MILLER: So, you're asking me if *Bazargan*
2 wasn't?

3 THE COURT: I'm asking you hypothetically.

4 MS. MILLER: Okay.

5 THE COURT: So, presuming you're saying there
6 are 14 cases that have found this. So, I think if
7 there are, really the major ones that have been
8 addressed, all of them are in overstay. And I'll
9 reread *Bazargan*. I see what you said. The issue, of
10 course, is he admitted twice violating the terms
11 before the time of the application being heard. But
12 independent of

1 think there's anything that firmly says that he
2 forfeits it. I think what he does is he loses his
3 place in line, because when he comes back, and if he
4 came back under --

5 THE COURT: Pretend I think that's what the
6 regulation says. Pretend I think that if you leave,
7 you're considered to have abandoned your asylum.

8 MS. MILLER: Okay. Then he would come back.
9 Are you saying come back? No.

10 THE COURT: No. I'm saying he's here. And
11 part of the reason he's here is because if he
12 leaves -- even if he just loses his place in line and
13 it's not abandonment, there is a reason

1 application well before he became in overstay status?
2 Why isn't that different?

3 MS. MILLER: Are we talking about the
4 defendant here or the hypothetical? The defendant is
5 in removal proceedings right now. His asylum
6 application has been found to not have merit. And
7 then he reapplied, and that reapplication was found to
8 not have merit, and so he was put into removal
9 proceedings and is in removal proceedings right now.
10 So, the first step to his asylum application is that
11 it's not credible.

12 Only an immigration judge can grant him the
13 lawful status. But I think that we're trying to
14 thread the needle a little bit too closely here by
15 saying the timing of the application is what decides
16 whether you're here illegally

1 MS. MILLER: That's right. And that's what
2 the cases say.

3 THE COURT: Why isn't it different? Because
4 the courts that are making these decisions refer
5 repeatedly to the fact the person is clearly illegal
6 at the time the conduct occurred. And we here --
7 either I agree with you or I don't.

8 MS. MILLER: Right.

9 THE COURT: You need to tell me why it's not
10 different that this gentleman made an appropriately
11 timed request for asylum well before his overstay
12 status.

1 MS. MILLER: No, no. In *Bazargan*, I'm saying
2 that *Bazargan* was in the same situation as the
3 defendant here in this case.

4 THE COURT: Are you saying, though, his
5 status is retroactive?

6 MS. MILLER: The status is not retroactive.
7 The status is the status. I'm saying there is no
8 change in status. That would have a bizarre result.

9 THE COURT: Wait, wait, wait, wait. With
10 *Bazargan*, you just said to me -- I said all of these
11 cases are folks who were illegal

1 absolutely right.

2 MS. MILLER: Right?

3 THE COURT: That's correct.

4 MS. MILLER: They don't distinguish that in
5 *Al Sabahi*.

6 THE COURT: They didn't have to. They didn't
7 face that issue that we have here.

8 MS. MILLER: There is no case that says a
9 person who has filed

1 *Dimaya*, there is no uncertainty in the residual
2 language.

3 THE COURT: You know, I'm aware of the
4 statutory argument about it's known by its associates,
5 about the law of the antecedent, and about the one you
6 just cited.

7 MS. MILLER: Okay.

8 THE COURT: *Stanko*.

1 number.

2 MS. MILLER: Okay.

3 THE COURT: You didn't seek permission to
4 file your sur-reply, and so I don't know why I should
5 consider it.

6 MS. MILLER: Well, okay. I know that the
7 Court had already said that. I felt that if --

8 THE COURT: If you follow the rules and ask
9 for it, then you can argue that.

<

1 that we tried to point out is that the Supreme Court
2 held in *Heller* that the Second Amendment does not
3 permit an absolute prohibition on handguns held and
4 used for self defense in the home. And that was
5 *Heller* at 636.

6 The ban on handguns in *Heller* was found to be

7 --

8 THE COURT: I know what *Heller* holds. So why
9 don't you just relate it to what we're arguing here.

10 MS. MILLER: Okay. So, then does the Court
1

1 application of receipt of a firearm. And the key
2 here, I was reading through the defendant's brief, and
3 sometimes he talks about possession of a firearm in
4 terms of 922(n), and sometimes he talks about receipt
5 of a firearm, and it's not about possession of a
6 firearm.

7 And the distinction here for purposes of a
8 Second Amendment analysis is, is a person who is,
9 first, illegally in the United States even enjoying
10 the extension of the Second Amendment rights to them?
11 And the court in *Carpio-Leon* said no.

12 If we look then at what this statute does in
13 terms of the Second Amendment, it requires a few
14 things:

1 we're talking about receive. But, yes, receive or
2 transfer a new firearm.

3 So what is the reason for that? The reason
4 for that is pretty clear, I think. It almost goes
5 without saying.

6 THE COURT: Well, no, you have to say it.

7 MS. MILLER: I will say it. Okay.

8 The reason for that is that courts have held
9 that people who are under indictment who are then
10 acquiring firearms through either a receipt, a new
11 receipt, can be viewed as having done that for a very
12

